IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.398 OF 2006

Kokan Railway Corporation Ltd. ... Appellant
V/s.
Bapu Bhikaji Ghadashi & Ors. ... Respondents

AND

FIRST APPEAL NO.399 OF 2006

Kokan Railway Corporation Ltd. ... Appellant
V/s.
Bhiku Tukaram Bharati & Ors. ... Respondents

Ms. Asha Bhambawani i/b.
Ms. Kirti Kokil,for the Appellant in both the Appeals.

Mr. S.B. Shetye, for Respondent Nos.1 & 2 in First Appeal No.398/2006 and for Respondent No.1 in First Appeal No.399/2006.
Mr. A.R. Patil, A.G.P. for Respondent No.3 in First Appeal No.398 of 2006.

CORAM : A.S.OKA, J.
DATE : AUGUST 14, 2006.

P.C.:

1. By consent taken up for hearing.

2. In these Appeals, the Appellant the Kokan Railway Corporation Limited has taken exception to the Judgments and Awards made by the learned Civil Judge, Senior Division, Ratnagiri, in References under Section 18 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act of 1894).

3. The Appellant in both these Appeals is the acquiring body at whose instance the land in dispute was acquired under the provisions of said Act of 1894. Initially, references made under Section 18 at the instance of the original claimans were allowed. The awards passed were set aside by this Court on the ground that the Appellant - Acquiring Body was not made a party to the references. This Court directed the Reference Court to permit parties to lead further evidence and decide the references afresh.

4. In these two cases, after order of remand was passed, the Appellant cross-examined the original claimant and thereafter, the Appellant filed written submissions. In paragraph no.8 of the impugned judgment in First Appeal No.398 of 2006, the learned trial Judge has held thus :-

> " The Hon'ble High Court justifiedly remanded the matter to look again afresh. Because when the Judgment was delivered and Award was passed, the KRCL was not party to this reference. After remand, this Court has given an opportunity to KRCL. The KRCL appeared, filed their say and taken the cross examination of the claimant, But at the same time KRCL failed to adduce any oral evidence on record by which this Court can come to the conclusion that the Award passed behind back of KRCL is not correct. As nothing new was brought on record, after remand, I do not think that the award passed by

this Court in absence of KRCL is wrong. Thereafter, I answered the issues accordingly and proceed to pass the following order."

5. Similar Judgments delivered by the learned trial Judge were challenged by the Appellant by filing First Appeal Nos.123 of 2006 and other connected Appeals. By Judgment and Order dated 5th May 2006, the said Appeals have been finally disposed of.

6. After hearing the learned Counsel appearing for the parties, I find that these appeals will be squarely governed by the aforesaid Judgment dated 5th May 2006 in as much as the Reference Court has not performed its duty. In the impugned Judgments and Awards, the learned trial Judge relied upon earlier Judgment of his predecessor which has been set aside by this Court. For the reasons which are recorded in Judgment and order dated 5th May 2006, these Appeals deserve to be partly allowed.

7. Hence, I pass the following order :-

(a) The impugned Judgments and Awards are set aside. Reference Applications under Section 18 of the Land Acquisition Act, 1994 are restored to file.

(b) The parties are directed to appear before the learned Trial Judge on 25th September 2006 at 11.00 a.m.

(c) The Reference Court will hear the oral submissions of the Advocates appearing for the parties and will decide the References afresh in the light of observations made by this court in the Judgment and Order dated 5th May 2006 passed in First Appeal No.123 of 2006 and other connected Appeals.

(d) There is no dispute between the parties that Appellant has deposited 50% of the amount awarded by the Reference Court under the impugned Judgment and Awards.

(e) One half of the amount which is deposited by the Appellant will be permitted to be withdrawn by the Claimants without any security and if the claimants furnish solvent surety for rest of the amount, the same may be permitted to be withdrawn by the claimants.

(f) Reference Court is expected to decide the references as expeditiously as possible and in any event on or before 28th February 2007.

(g) The Appeals are partly allowed in the above terms with no orders as to costs.

(h) Parties to act on the authenticaed copy of this order.

(i) Writ to be sent immediately.

JUDGE